

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LENZO SEAMSTER,
Plaintiff,
v.
WILL BAPTISTA,
Defendant.

Case No. [14-cv-00862-VC](#) (PR)

**ORDER DENYING MOTION FOR
PARTIAL SUMMARY JUDGMENT
FOR FAILURE TO EXHAUST**

Re: Dkt. No. 29

The motion for partial summary judgment based on Seamster's alleged failure to exhaust his administrative remedies is denied. At every level, prison officials appeared to misunderstand Seamster's appeal. They rejected his first-level appeal on the ground that he'd requested removal of two different prison officials based on two different events, even though he only requested the removal of Baptista, the official that Seamster alleges retaliated against him for the exercise of his First Amendment rights. They rejected his second-level appeal on the ground that he'd raised two separate issues, even though he only raised one issue (while seeking two separate but related remedies). They rejected his third-level appeal on the ground that his second-level appeal had been cancelled, but as just discussed, that cancellation was improper. Under these circumstances, the defendant is not entitled to summary judgment for failure to exhaust administrative remedies. *See Albino v. Baca*, 747 F.3d 1162, 1172 (9th Cir. 2014); *Sapp v. Kimbrell*, 623 F.3d 813, 822-24 (9th Cir. 2010); Cal. Code Regs. tit. 15, §§ 3084.5(b)(3); 3084.6(a)(1) and (2).

If Baptista wishes to file a dispositive motion on the merits of Seamster's claims, he must do so within twenty-eight days of the date of this order. Seamster's opposition is due twenty-eight days after Baptista files his motion. Baptista shall file his reply within fourteen days thereafter. If Baptista is of the opinion that this case cannot be resolved by summary judgment, he shall inform the court of this before the date the summary judgment motion is due.

Baptista shall submit with his motion the notice set forth in *Rand v. Rowland*, 154 F.3d

952, 962-63 (9th Cir. 1998), informing Seamster how to oppose a summary judgment motion.

This Order terminates docket number 29.

IT IS SO ORDERED.

Dated: September 8, 2015



VINCE CHHABRIA
United States District Judge

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v.

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CERTIFICATE OF SERVICE


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 8, 2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Lenzo Seamster ID: H-64914
CHCF AIA-121
PO Box 31960
Stockton, CA 95213

Dated: September 8, 2015

Susan Y. Soong
Clerk, United States District Court

By: 
Kristen Melen, Deputy Clerk to the
Honorable VINCE CHHABRIA